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IRS Revises Voluntary Correction Program for Retirement Plans

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WASHINGTON — The Internal Revenue Service today issued updated guidance on the voluntary correction program for employee retirement plans – the Employee Plans Compliance Resolution System (EPCRS).

"Employers and plan administrators want to comply with the tax laws and regulations to protect plan participants," said Michael Julianelle, director of the IRS's Employee Plans division. "EPCRS helps employers and plan administrators take a proactive role in identifying and fixing mistakes. It also encourages implementation of practices and procedures that ensure retirement plans comply with laws and regulations."

Under EPCRS, plan sponsors and plan professionals can correct certain errors in employee retirement plans, in some cases without having to notify the IRS. Correcting plans in this way allows participants to continue receiving tax-favored retirement benefits and protects the retirement benefits of employees and retirees.

There are three levels of correction programs in EPCRS:

- The Self-Correction Program (SCP) permits a plan sponsor to correct insignificant operational failures in plans such as qualified plans, 403(b) plans, SEPs or SIMPLE IRA plans without having to notify the IRS and without paying any fee or sanction. In many instances, a plan sponsor may correct significant operational failures without notifying the IRS and without paying a fee or sanction.

- The Voluntary Correction Program (VCP) allows a plan sponsor, at any time before an audit, to pay a limited fee and receive the IRS's approval for a correction of a qualified plan, a 403(b) plan, SEP or SIMPLE IRA plan.

- The Audit Closing Agreement Program (Audit CAP) allows a sponsor to correct a failure or an error that has been identified on audit and pay a sanction based on the nature, extent and severity of the failure being corrected.

In revising the EPCRS revenue procedure, the IRS incorporated comments from the retirement plans community by adding flexibility and increasing correction methods. The new guidance, which is a revenue procedure, makes the following improvements:

- Expands the availability of SCP in situations where operational mistakes have been partially corrected when the plan comes under examination. Also, new examples relating to the exclusion of employees from 401(k) plans have been added to the standardized corrections. The new examples will benefit those who use SCP to correct the failures described in those examples.

- Establishes streamlined application procedures under VCP for numerous issues, including failure to amend plans for law changes, loan problems, failure to make minimum distributions to participants, excess elective deferrals made by participants to 401(k) plans and plans established by ineligible employers. In addition, streamlined application procedures have been developed for SEPs, SARSEPs and SIMPLE IRAs.

- Includes a sample application format that may be used for all other VCP applications. “These revised application procedures should make the correction programs more accessible to small business employers,” said Joyce Kahn, who directs the voluntary compliance program. “Also, we anticipate that the new procedures will facilitate an expedited review of a significant number of VCP applications.”

- Makes it easier to correct loan failures under VCP. Loans that violate section 72(p) of the Internal Revenue Code may still be corrected even if the loans do not violate the terms of the plan. Also, in many cases, the fee under VCP for correcting loan failures will be reduced by 50 percent.

“The improved correction for participant loans should enable many more participants to bring delinquent loans from retirement plans back into compliance without incurring the tax consequences resulting from those loans being treated as taxable distributions under section 72(p)”, Kahn said.

There has been a significant expansion of streamlined application procedures under VCP. “We encourage the public to send comments on how to further improve the program and make it easier for business owners to operate their retirement plans,” Kahn added.

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